

EXHIBIT 1

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL GRECCO
PRODUCTIONS, INC.,
Plaintiff,

V.

ZIFF DAVIS, LLC,
Defendant.

CV 19-4776 DSF (PJW_x)

Order GRANTING Motion to
Dismiss First Amended
Complaint (Dkt. No. 29)

The Court previously dismissed Plaintiff's copyright complaint as barred by the statute of limitations. Leave to amend was granted to allow Plaintiff to add facts to support its assertion that it had no reason to know of the alleged infringement prior to the 2018 discovery date. Plaintiff filed an amended complaint and Defendant again moved to dismiss. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for November 25, 2019 is removed from the Court's calendar.

The amended complaint differs from the original complaint in almost no material way. The only relevant changes are that Plaintiff added the fact that it discovered the alleged infringement by way of a reverse image search, FAC ¶ 21, and the fact that “[p]rior to discovering Defendant’s unauthorized use of the Images, MGP was not aware of Defendant or Defendant’s Websites, nor had never been aware


of any of its photographs being used by Defendant or on any of Defendant's Websites." FAC ¶ 22.¹

These allegations do nothing to address the Court's prior holding that Plaintiff did not "plead any facts that would suggest that it had no reason to know of the infringement prior to [the date of actual discovery]." The complaint and the amended complaint both directly allege that the allegedly infringing websites receive extremely heavy traffic. See FAC ¶¶ 16-19. There is no allegation that the alleged infringement was anything but open and discoverable since the first postings in 2014. Plaintiff does not allege that the reverse image search functionality that it used to discover the alleged infringement was not available until 2018. Nor could it, because Google appears to have first implemented that functionality in 2011. See Jason Kincaid, Google Search by Image: Use a Snapshot as Your Search Query, <https://techcrunch.com/2011/06/14/google-search-by-image-use-a-snapshot-as-your-search-query> (June 14, 2011).

Whatever the scope of the discovery rule, the Court declines to find that it creates an effectively open-ended statute of limitations for unconcealed copyright infringement on a massively trafficked website. The motion to dismiss is GRANTED. The Court declines to grant leave to amend because the very minor, mostly conclusory amendments made between the original and the amended complaint show that Plaintiff knows no facts that it could allege to escape the statute of limitations bar.

IT IS SO ORDERED.

Date: November 18, 2019


Dale S. Fischer
United States District Judge

¹ This is the "corrected," though still not correct, language of the First Amended Complaint. Dkt. 26.